

# **Board of Contract Appeals**

General Services Administration  
Washington, D.C. 20405

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April 27, 2005

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GSBCA 16596-RELO

In the Matter of JANICE F. STUART

Janice F. Stuart, Beaverton, OR, Claimant.

Karen J. Miller, Finance & Accounting Officer, United States Army Corps of Engineers, Portland District, Portland, OR, appearing for Department of the Army.

**DANIELS**, Board Judge (Chairman).

Janice F. Stuart questions the determination of her employer, the Army Corps of Engineers, to deny relocation benefits in connection with her permanent change of station from Anchorage, Alaska, to Portland, Oregon. Because this transfer was in the interest of the Government, we grant the claim.

A subsidiary issue in the case is whether, if the Corps is required to pay relocation benefits, it must pay for the costs Ms. Stuart might incur in purchasing a residence in the Portland area. The agency maintains that it is not obligated to pay for these costs because the employee continues to own the building in which she lived while she was previously working in Portland. Because the employee returned to Portland five years after leaving and does not wish to reside in that building, we hold for her on this issue as well.

A complicating factor in this case is the status of Alaska under the laws regarding changes of duty stations by federal employees. Alaska has been one of the United States since President Eisenhower signed the Alaska Statehood Proclamation on January 3, 1959. *See also* Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958). For some purposes, this state is “within the United States.” For other purposes, however, it is not part of the “continental United States,” and for still other purposes, it is “outside the United States” or even “overseas.” This inconsistent treatment may have confused the Corps officials who rejected Ms. Stuart’s claim.

## Background

In May 2000, Ms. Stuart, then an employee of the Corps’ Portland (Oregon) District, accepted a position with the Corps’ Alaska District. She moved to Anchorage under orders

which provided relocation benefits appropriate for a transfer in the interest of the Government. One of those benefits was reimbursement of real estate transaction expenses.

Prior to moving, Ms. Stuart had signed a “Statutory Reemployment Rights Agreement.” This agreement provided:

I understand that this overseas assignment is part of the Army’s rotation program and that my selection for this overseas tour of duty entitles me to statutory reemployment rights under 10 USC 1586 to my former position upon completion of the initial tour of duty or upon completion of any approved extension.<sup>[1]</sup> I am aware that if an extension is not approved after completion of my initial tour of duty that [sic] I may be directed to return to my former position in the United States . . . .

I also understand that statutory reemployment rights are authorized for the initial tour [of three years] and approved extensions for an aggregate period of not to exceed 5 years.

Ms. Stuart enjoyed living and working in Alaska. She bought a house there, and the Corps, pursuant to the orders it had issued, reimbursed her for the expenses she incurred in making this purchase.

Toward the end of 2004, Ms. Stuart, recognizing that her rights to be reemployed in Oregon would expire in May 2005, asked the Portland District to extend the period of time in which she might exercise those rights. The Portland District denied the request, noting that its workload was “higher than ever” and that an employee who held Ms. Stuart’s grade and occupation was about to retire. At the time, Ms. Stuart tells us, the Alaska District had an excess of personnel and was seeking authority to conduct a reduction-in-force.

In January 2005, the Corps issued to Ms. Stuart orders to travel to Portland to resume her position there. These orders provided for the Government’s payment of the costs of the employee’s travel and the shipment and temporary storage of her household goods. The orders did not provide for the Government’s payment of any other benefits. Ms. Stuart moved back to Portland under these orders in March 2005.

### Discussion

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<sup>1</sup>Section 1586 of title 10, United States Code, pertains to rotational assignments of Department of Defense employees “between posts of duty in the United States and posts of duty outside the United States.” 10 U.S.C. § 1586(a) (2000). Subsection (f) of this section provides that “[t]he President may, upon his determination that such action is necessary in the national interest, declare that, for such period as he may specify, an assignment of an employee to duty in Alaska or Hawaii shall be held and considered, for the purposes of this section, to be an assignment to duty outside the United States.” On November 25, 1960, President Eisenhower issued Executive Order 10895, which made the permissible determination and declaration. This executive order remains in effect.

When an employee is transferred from one permanent duty station to another, the transfer usually benefits both the Government and the employee. For the purpose of determining whether the employee may receive relocation benefits, however, the transfer must be characterized as for the principal advantage of one or the other; it is either “in the interest of the Government” or “primarily for the convenience or benefit of an employee.” If the primary beneficiary is the Government, the employee is entitled to receive certain benefits and may, in the agency’s discretion, receive others (all subject to regulatory constraints). If the primary beneficiary is the employee, on the other hand, none of these expenses may be paid from Government funds. *Thelma H. Harris*, GSBCA 16303-RELO, 04-1 BCA ¶ 32,540 (2003); *Robert Bailey*, GSBCA 15935-RELO, 03-1 BCA ¶ 32,232, *reconsideration denied*, 04-1 BCA ¶ 32,453 (2003); *Riyoji Funai*, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342; 5 U.S.C. §§ 5724(a)(1), (2), (h); 5724a(a), (c), (d), (f) (2000).

The Corps maintains that Ms. Stuart’s move back to Portland was primarily for the convenience or benefit of the employee. It says that her transfer occurred because she exercised her return rights and that the transfer was not directed by management. The agency notes that the employee did not return due to a reduction-in-force or transfer of function, and that she did not apply for her Portland position in response to a vacancy announcement. Ms. Stuart contends, to the contrary, that the move was *not* for her convenience or benefit. “If I had a choice, I would [have] remain[ed] in Alaska and retain[ed] my [then-]current position,” she writes. She asserts that the only true choice she was permitted was the same one faced by any employee who is directed to transfer to a new duty station: accept the assignment or have employment terminated.

We consider Ms. Stuart’s argument far more powerful than the one made by the Corps. The employee wanted to stay in Alaska. The agency refused to allow her to remain there because it had too many personnel in Alaska and not enough in Oregon. In particular, it had a need for someone at Ms. Stuart’s grade and in her occupation in Oregon. Sending her back to Portland was contrary to her desires and to achieve greater efficiency in agency operations. It was therefore principally for the benefit of the agency, not the employee. Consequently, the agency is required to pay certain relocation benefits (and may choose to pay others) to Ms. Stuart. *See Ross K. Richardson*, GSBCA 15286-RELO, 00-2 BCA ¶ 31,131.

In addition to maintaining that Ms. Stuart’s move was principally for her own convenience, the Corps effectively urges that even if our judgment is to the contrary, relocation benefits are still impermissible. The basis of this position is a statement contained in both *Paul C. Martin*, GSBCA 13722-RELO, 98-1 BCA ¶ 29,412, at 146,119 n.3 (1996), and *Jackie Leverette*, GSBCA 15806-RELO, 03-1 BCA ¶ 32,119, at 158,799 (2002):

Expenses recoverable under the return rights provision are significantly different than the expenses payable to an employee relocating in the interest of the Government. In particular, such relocation benefits as reimbursement of real estate expenses associated with the sale and purchase of homes, the miscellaneous moving allowance and reimbursement of temporary quarters subsistence expenses are not part of the return rights package.

This conclusion was appropriate in the circumstances of the two cited cases. In both, the employees returned from assignments “overseas” (as that term is used in 10 U.S.C. § 1586) to accept positions for which vacancy announcements expressly provided that relocation benefits would not be provided. *See also Marco A. Endara*, GSBCA 16524-RELO, 05-1 BCA ¶ 32,883. Because these employees were exercising return rights, they, unlike others who move primarily for their own benefit, were entitled to the expenses of travel and transportation. *See* 5 U.S.C. § 5724(d) (differentiating the situation covered by 5 U.S.C. § 5722 from the one covered generally by *id.* § 5724). But the fact that they were exercising those rights did not entitle them to relocation benefits generally.

Where an employee returns from “overseas” as a result of a transfer which is in the interest of the Government, however, the employee is entitled to relocation benefits *as well as* the expenses of travel and transportation. Until mid-1996, the General Accounting Office (GAO) settled claims involving expenses incurred by federal civilian employees incident to transfers of official duty stations. As the GAO held, the fact that travel and transportation expenses for such an employee is governed by a separate statute from the one governing travel and transportation expenses for an employee transferred between duty stations in the forty-eight contiguous United States or the District of Columbia has no bearing on whether the employee returning from “overseas” is entitled to relocation benefits. *Thomas D. Mulder*, 65 Comp. Gen. 900 (1986).

Among the relocation benefits to which Ms. Stuart is entitled, as an employee who transferred in the interest of the Government between duty stations both of which “are located within the United States,” is the expenses of selling a residence at her old station and buying one at her new station. 5 U.S.C. § 5724a(d)(1). Thus, it is clear that in accordance with rules established in the Federal Travel Regulation, 41 CFR 301-11 subpt. A (2003), and the Defense Department’s Joint Travel Regulations, C14000-A, -B (Mar. 2005), if Ms. Stuart sells her residence in Alaska within a prescribed period of time, the Corps must reimburse Ms. Stuart for the expenses she incurs in making the sale. The final issue we must address in this case is whether the agency must also reimburse the employee for expenses she may incur in buying a residence in the Portland area.

Before Ms. Stuart was transferred to Alaska, she lived in one unit of a duplex in the Portland area which was owned by her and her mother. Once the transfer occurred, Ms. Stuart’s daughter moved into the unit. The daughter has lived there since. Both mother and daughter consider it the daughter’s home, and Ms. Stuart says she will not evict her daughter. Ms. Stuart is receiving mail at this address until she finds a permanent residence for herself in the area. The Corps believes that because Ms. Stuart continues to own this dwelling, which was once her home, she is not entitled to be reimbursed for expenses of purchasing a new residence at her new duty station.

The GAO established a bright-line rule, which we have adopted, with regard to employees who are transferred back to a former duty station at which they own a home: if the employee is notified of the transfer within the period of time allowed under regulation for completing his residence transactions, the agency’s obligation to reimburse him for residence transaction expenses is limited to allowable expenses which have already been incurred and those which could not be avoided. *Albert R. Wilcox*, GSBCA 15776-RELO, 02-2 BCA ¶ 31,864; *D. Larry Fraser*, GSBCA 14034-RELO, 97-2 BCA ¶ 29,221. The

period of time allowed for completing residence transactions is two years, with a possible extension of up to two years, if requested by the employee and granted by the agency. 41 CFR 302-11.21 to -11.23; JTR C14000-B. Ms. Stuart did not request an extension of the period, so the relevant period for her situation is two years. *Deborah DiFalco*, GSBCA 16306-RELO, 04-1 BCA ¶ 32,545 (2003).

Because the Corps transferred Ms. Stuart back to the Portland, Oregon, area more than two years after sending her to Alaska, the fact that she continues to own the home in which she previously lived in the Portland area has no bearing on her entitlement to be reimbursed for expenses she may incur in buying a new residence in the area.

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STEPHEN M. DANIELS  
Board Judge